

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Noel Patrick E.
 (Last) (First) (Initial)

Prisoner Number V88778

Institutional Address PO Box 290066, Represa, CA. 95671-0066

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

PATRICK E. NOEL

(Enter the full name of plaintiff in this action.)

vs.

JAMES WALKER, WARDEN

(Enter the full name of respondent(s) or jailor in this action)

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT (PR)
 OF HABEAS CORPUS**

E-filing

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

PET. FOR WRIT OF HAB. CORPUS

- 1 -

530 New
FILED
 AUG - 7 2008
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

MHP

CV 08 3777

08-3777 MHP

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda

County Superior Court, Oakland):

Mendocino County CourtsUkiah, CA.

Court

Location

(b) Case number, if known CR-04-58628002(c) Date and terms of sentence 7/22/2005 -- 41 years(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes X No

Where?

Name of Institution: Cal. State Prison, SacramentoAddress: PO Box 290066, Represa, CA. 95671-0066

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Cal. Pen. Code secs. 664/187, 186.22(a), 245(b) (2 counts),
273a(a) (2 counts), 207 (2 counts), Veh. Code sec. 10851

3. Did you have any of the following?

Arrestment: Yes X No

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes _____ No X

4. How did you plead?

Guilty _____ Not Guilty X Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes _____ No X

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No

(c) Time of plea Yes X No _____

(d) Trial Yes X No

(e) Sentencing Yes X No _____

(f) Appeal Yes X No

(g) Other post-conviction proceeding Yes _____ No X

8. Did you appeal your conviction? Yes X No

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No

Year: 2007 Result: Affirmed

Supreme Court of California Yes X No

Year: 2007 Result: Review denied

Any other court Yes _____ No X

Year: _____ **Result:** _____

(b) If you appealed, were the grounds the same as those that you are raising in this

2 (c) Was there an opinion? Yes X No

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4	Yes	No	X
---	-----	----	---

5 If you did, give the name of the court and the result:

6 _____

7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes X No

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: Mendocino County Courts

19 Type of Proceeding: Habeas Corpus

20 Grounds raised (Be brief but specific):

21 a. CALJIC No. 2.83 -- 6th and 14th amendments

22 b Jury Misconduct -- 6th and 14th amendments

23 c. Ineffective Assistance of Counsel -- 6th, 14th

24 d. _____

25 **Result:** Denied **Date of Result:** 5/6/2008

26 II. Name of Court: _____

27 | Type of Proceeding: _____

28 | Grounds raised (Be brief but specific):

1 a. _____

2 b. _____

3 c. _____

4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____

10 b. _____

11 c. _____

12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No X

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: Denial of motion to dismiss gang charge and
6 enhancement violated Due Process

7 Supporting Facts: trial court denied pretrial motion to dismiss
8 gang charge and enhancement but later granted new trial
9 motion as to enhancement, finding insufficient evidence.
10 Admission of gang evidence rendered trial unfair.

11 Claim Two: Attempted murder conviction is not supported by
12 sufficient evidence, violating Due Process.

13 Supporting Facts: Evidence of shooter's identity was equivocal
14 and inconsistent with physical evidence. Even if
15 petitioner was the shooter, there was insufficient evidence
16 of intent to kill.

17 Claim Three: Gang offense is not supported by sufficient evidence
18 violating Due Process.

19 Supporting Facts: Gang enhancement was dismissed after trial
20 court found insufficient evidence and partially granted
21 new trial motion. No gang related offense was proven.

22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

NOEL, PATRICK E.

PAGE 6-A

ATTACHMENT TO PETITION FOR WRIT OF HABEAS CORPUS

CLAIM FOUR: The evidence is insufficient to sustain two convictions for violating Penal Code section 273a(a) because there was only one continuous course of conduct.

SUPPORTING FACTS: Raylene Dondero testified that she and her daughter were in her vehicle with petitioner when he shot a gun into the floorboard of her vehicle then immediately pointed the gun at her leg.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 Jackson v. Virginia (1979) 443 U.S. 307;

5 People v. Castaneda (2000) 23 Cal.4th 743;

6 In re Jose P. (2003) 106 Cal.App.4th 458

7 Do you have an attorney for this petition?

Yes____ No X

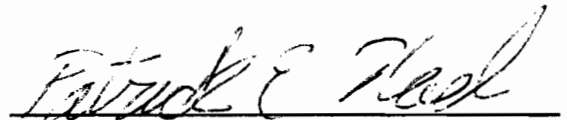
8 If you do, give the name and address of your attorney:

9 _____
10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12
13 Executed on

7-24-08

14 Date



Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

Randi Covin
Attorney at Law
4100 Redwood Rd., Suite 396
Oakland, CA. 94619
Telephone: (510) 530-8579
Facsimile: (510) 530-8573

U.S. District Court
Northern District of California
450 Golden Gate Ave.
San Francisco, CA. 94102



RECEIVED

AUG 1 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA